Mr. ADAM'S SPEECH

IN DEFENCE OF

R. T. CROSSFIELD,

TRIED FOR

HIGH TREASON.

AT THE OLD BAILEY,

ON

The 11th and 12th of May, 1796.

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1797.

ADVERTISEMENT.

MR. CROSFIELD was indicted, together with PAUL THOMAS LEMAITRE, JOHN SMITH, *and* GEORGE HIGGINS, *for a Conſpiracy, in compaſſing and imagining the death of the King. The Overt Act upon which the Proſecutor reſted the Caſe was the preparing an Air Gun, from which a poiſoned Arrow was to have been diſcharged at his Majeſty, in ſome public Place.*

The Evidence conſiſted,

FIRST, *of Perſons to prove Orders given, Drawings delineated, and part of a Model made, under the direction of a Perſon of the name of* UPTON, *(who was the Informer), to which acts* CROSSFIELD *was ſaid to be a Party..*

It conſiſted Secondly, of Declarations or Confeſſions of CROSSFIELD *when he was a Priſoner to the French in Breſt Harbour.*

The 1ſt Day of the Trial was occupied with the caſe of the Proſecution. The Court adjourned at Midnight, and the next Morning, at Eight o'Clock, the Buſineſs opened with Mr. Adam's Speech.

ERRATA.

PAGE 3, l. 5,—for *these* read *those*.
l. 18,—dele *of*
13, l. 7,—for *upon* read *Upton*.
16, l. 7,—from bottom, for *these* read *those*.
35. Bottom line, after *12th* insert *of September*.
44, l. 6,—from bottom, for *admissibility* read *unadmissibility*.
46, l. 2,—from bottom, for *ccasion* read *occasion*.

SPEECH

OF

WILLIAM ADAM, Esq.

ON THE

TRIAL

OF

ROBERT THOMAS CROSSFIELD,

FOR HIGH TREASON.

GENTLEMEN OF THE JURY,

WE are now come to that ſtage of this cauſe, when I am to addreſs you upon the part of the priſoner. Gentlemen, I cannot help congratulating you, and I cannot help congratulating myſelf, that the meaſure of adjournment from the heat of the Court of laſt night, to the quietneſs and compoſure of this morning has taken place. I am ſure, Gentlemen, it is for the benefit of us all, that we come here with freſh recollections, with minds unimpaired by a long and a fatiguing attendance, in order to diſcharge this moſt important, this moſt weighty, and to me, this moſt awful duty.

Gentlemen, I may fairly ſay, becauſe I can ſay it with truth and ſincerity, I never before ſtood in ſuch a preſence.

Gentlemen, it never happened to me before, in the courſe of my profeſſional life, to be engaged as the perſon who was to lead in conducting the defence of a priſoner in a trial for his life. Far leſs has it ever happened to me to be charged with the life of a priſoner, tried for the crime for which the priſoner at the bar now ſtands indicted. Gentlemen, when I mention this circumſtance, I can aſſure you, and I can aſſure the learned and the reſpectable Judges, who preſide upon this occaſion, that I make this declaration, not with a view of conſuming your time, by any vain or any particular applications to myſelf; I do it, becauſe I think upon this occaſion, it will ſuggeſt that, which, if it were neceſſary to inculcate, I am ſure I have much need of, namely, that the learned and reſpectable perſons who preſide here, will conſider themſelves as Counſel for the priſoner. I know it is their diſpoſition, I know it is the conſtant and general tenor of their practice; and I am ſure that I ſtand in need, and my client, truſting his cauſe in my hands, ſtands in need of that aid.

Gentlemen, I truſt too, if any thing were wanting to excite *your* attention, to awaken *your* feelings, or to call upon *you* for a patient hearing of this caſe, my inſufficiency will excite thoſe exertions in you. And I conſide in your coming

into

into this Court with the determination (impreſſed upon all your minds) impartially, patiently, and with that "integrity which is your true portion "and proper virtue," to conſider this cauſe. I know that all theſe qualities will be exerted by you on every account as well as on account of the particular circumſtance in which I have deſcribed myſelf to ſtand.

Gentlemen, I can aſſure you, that from the moment I left the Court laſt night, to the moment I am now addreſſing you, with the ſhort exception of the few hours of refreſhment by ſleep which I had an opportunity of taking, my mind has been conſtantly employed in this weighty, in this important matter. I have endeavoured to uſe that time to the beſt advantage, for the purpoſe of defending the priſoner at the bar; and for arranging the matters of which I have to diſcuſs, in the beſt order of which I am capable.

Gentlemen, before I proceed to ſtate the obſervations that I have to make, either upon the nature of the caſe, or upon the evidence as it has been laid before you, I will take the liberty of ſhortly preſenting to you, what I conſider to be the queſtion now to be tried.

Gentlemen, the priſoner at the bar is indicted for High Treaſon, and the particular ſpecies of High Treaſon, for which he is indicted, is that of compaſſing and imagining the death of the King. By the law of the land, as was ſtated to you, by Mr. Attorney General, the will in that caſe goes for

for the fact. That is to ſay, the intention of killing the King is as much a crime as if the fact were actually committed. And I agree, perfectly, with my learned friend, that it is impoſſible to conceive a wiſer inſtitution. Nay, I enlarge upon his ſtatement; for if that inſtitution is wiſe for the purpoſes of Monarchical Government in general, it is particularly wiſe as applied to the Government of this Country. In this mixed Monarchy where the nature of our Government gives a free ſcope to a variety of political opinions, and modes of thinking; it becomes more particularly neceſſary to protect the perſon, who unites and fortifies the general ſyſtem and frame of our Conſtitution. At the ſame time, however, that the Legiſlature has been cautious, and has peculiarly interfered to guard the ſacred life, on which, I aſſert (with the ſame energy as Mr. Attorney General) the well being of the ſtate ſo much, ſo eminently depends; it has been moſt anxious to fence and guard the critical ſituation of the priſoner; to take care that he ſhall have a fair trial; to lay down certain rules for the manner of aſſembling you in the place where you are now ſeated; to regulate the principles which are to guide you in conſidering the evidence. Thus while the Law and Conſtitution wiſely protect the Crown againſt ſudden attacks, the ſame Law and Conſtitution anxiouſly erect ſafeguards for the ſubject from illegal convictions.

Gentlemen, one of the ſafeguards of the ſubject

ject is, that there ſhall be ſtated upon the face of the indictment, thoſe *overt acts* or *open deeds*, which are ſuppoſed to have the tendency to accompliſh the end in queſtion. Upon the preſent occaſion you have had it ſtated to you (and I will, therefore, only recite it again ſhortly to you) that this indictment does ſet forth ſuch overt acts: that it ſtates, in the firſt place, a conſpiracy between the priſoner, and three other perſons, who do not now ſtand upon their trial, and perſons to the Jurors unknown, to prepare a certain inſtrument, to be loaded with a certain arrow, to be ſent forth from thence, for the purpoſe of taking away the life of the King. It likewiſe ſtates the ſame overt act, but without laying it to be done in conſpiracy with others,—It likewiſe ſtates overt acts of conſultation, where they conſulted and conferred together, for the purpoſe of taking away the life of the King. Theſe are, generally ſpeaking, the nature of the overt acts ſet forth in the indictment.

You will obſerve throughout, Gentlemen, that there are two diſtinct propoſitions in this caſe—One propoſition is, that there was an inſtrument prepared, or ordered to be prepared; another is, the intent or the purpoſe to which that inſtrument was meant to be applied. Theſe are in their nature diſtinct propoſitions. They are diſtinct propoſitions upon the face of the indictment; and they are diſtinct propoſitions in the proof; as I ſhall have occaſion afterwards to ſhew you when I come to ſpeak to that part of the evidence.

Gentlemen

Gentlemen, you have heard upon this occasion, that there have been various rules laid down by lawyers, relative to the manner in which evidence in a question of this nature is to be considered by a Jury; but that there is no very difficult question of law upon the application of the rules of evidence in this case; so that I shall have the happineſs, I trust, of making myself distinctly understood to you upon the present occasion. Gentlemen, my learned friend, the Attorney General, cited his doctrines of the law of England, with reſpect to Treaſon, from an authority to whom he paid the higheſt tribute of applauſe. To that authority no tribute of praiſe is too great—I allude to Mr. Juſtice Foſter, whoſe name, he truly ſaid, would live as long as the Conſtitution of England endured. I ſhall have occaſion, in the ſequel of what I ſhall be under the neceſſity of addreſſing to you, to have recourſe to the doctrines, and to the learning of that eminent perſon; but I flatter myſelf, that neither the learned Judges upon the Bench, nor you whom I have now the honour more directly to addreſs, will think that I deviate in the ſmalleſt degree from that propriety which is due to your ſituation, from that rule of conduct which relates to mine, from that duty which I owe above all, to the priſoner at the bar, if I call your attention back to a much more early period of the English hiſtory, and of the English law, if I endeavour to deduce my doctrines from perſons who wrote, comparatively ſpeaking, in times of antiquity,

quity,—that I may ſhew thoſe doctrines to have been continued from that early period down to the preſent moment, to include the time in which Mr. Juſtice Foſter wrote, and conſequently to have been invariably the ſame.

Gentlemen, the act of Parliament, ſays, (for this is an indictment upon the ſtatute of 25th Edward III.) "When a man doth compaſs or imagine the death of our Lord the King, and thereof be provably attainted of open deed, by the people of his condition, he ſhall be adjudged guilty of Treaſon." This is, ſhortly, the part of the ſtatute which relates to the crime in queſtion, which I ſtate to you ſeparately from the other Treaſons, which are enacted by that ſtatute, in order that you may preciſely and clearly underſtand, that the only queſtion for you to try upon the evidence is, whether the perſon at the bar did compaſs and imagine the death of the King: and whether he be thereof *provably* attainted of open deed. Now, Gentlemen, the word *provably* has been upon all occaſions, a word extremely relied upon, in the conſtruction of this act of parliament. The meaning of that word has received a moſt ſolemn, a moſt deliberate, and a moſt enlightened conſideration from a perſon greatly eminent in the law of this Country, from my Lord Chief Juſtice Coke; who, in his Commentary upon this ſtatute, ſays—"By *provably* is meant that it is upon direct and manifeſt proof, not upon conjecture or preſumptions, or inferences,

" ferences, or *ſtrains of wit*, but upon good and
" ſufficient proof; and herein the adverb *provably*
" hath a great force, and ſignifieth a direct plain
" proof, which word the parliament did uſe, for
" that the offence was ſo heinous, and ſo heavily,
" and ſeverely puniſhed as none other the like;
" and, therefore, the offender muſt *provably* be
" attainted, which words are as forcible as upon
" manifeſt and direct proof; note, the word is
" not *probably*, for then common argument would
" do, but the word is *provably* be attainted."

Such is the conſtruction, ſuch is the opinion given by Sir Edward Coke, conſidering this ſtatute, deliberately in his cloſet: a perſon deeply acquainted with the principles of the law of England. You ſee that he makes a great deal to depend upon the word provably: that he diſtinguiſhes moſt materially between the word *provably*, and the word *probably*; and he ſays, that on account of the ſeverity of the puniſhment, and for the protection of the priſoner, that the legiſlature meant that he muſt be attainted *provably*, that is *by manifeſt and direct proof*.

The commentary of this profound lawyer is now by common conſent (and it will be ſo ſtated to you from the Court) allowed to be the undoubted law of England—to be incorporated as completely in the Conſtitution and the law of the Country as any other maxim, any other principle, or any other declaration of the common law whatever. Gentlemen, this, which was laid down

by

by my Lord Chief Juſtice Coke in his cloſet—this, which has become (as I have had the honor of ſtating to you) the law of the Country—this which is uniformly reſted upon by Judges and by Juries, in all queſtions of Treaſon, as the ſound rule of conſtruction and deciſion, was carried into effect, was realized, and acted upon, by another great luminary of the law, in a remarkable proſeſecution, in the reign of James I.—not a proſecution for Treaſon, indeed, but a proſecution in which Sir Francis Bacon, to whom I allude, brings the doctrine directly home to the queſtion of Treaſon; ſo that the ſame principle which was laid down by my Lord Coke privately in his cloſet, was adopted and acted upon in public Court by my Lord Bacon, when he was Attorney General; at a time that he was addreſſing a Jury impannelled, as you are now, to try a priſoner indicted by the Crown.

My Lord Bacon, in the trial of Lord Somerset, ſays, "The King hath given us in command that "we ſhould not expatiate or make invective, but "materially purſue the evidence, as it conduceth "to the point in queſtion; a matter that, though "we are glad of ſo good a warrant, yet we ſhould "have done ourſelves; for far be it from us, by "*any ſtrains of wit or art*, to ſeek to play prizes, "or to blazon our names in blood. We ſhall car-"ry the lanthorn of justice (which is the evidence) "before your eyes upright. We will ſpeak ſome-"what of the greatneſs of the offence, not to weigh "the priſoner down, but to ſhew that a great offence

" needeth a good proof, for the offence next unto " *High Treaſon* is the greateſt."

In that caſe, my Lord Bacon was ſpeaking in the trial of a perſon for murder, but you ſee he brings the whole doctrine home to the question of Treaſon:

He obſerves, that the King had given it in command not to expatiate, or make invectives.

Gentlemen, the rules of modern times, and the practice of the Conſtitution now, admit of no ſuch alluſions; I am ſure, however, if they had been permitted, the monarch under whoſe government we live—who conſiders his own life as ſacred only for the benefit of the Society over which he preſides, would have given such a command, if according to the uſage of theſe times, it had been regular ſo to do. I am ſure, at the ſame time, that I do no more than juſtice to my learned friend when I ſay, that ſuch a command to him would have been unneceſſary, for throughout all the opportunities that I have had of ſeeing his practice, in the eminent and difficult ſituation in which he ſtands, he has followed forth peculiarly, he has copied candidly and manfully, the doctrine laid down by my Lord Bacon.

Gentlemen, my Lord Bacon brings his doctrine home to Treaſon; he lays it down in a caſe of murder, but he ſays expreſsly, that murder is the highest crime except Treaſon; he may therefore be ſaid to bring the doctrine of my Lord Coke, with regard to the meaning of the word *provably* home to the particular point of Treaſon;

Treaſon; for he lays it down as a doctrine, that in a queſtion where there is a prisoner at the bar tried for his life, whether it be a Treaſon, or whether it be murder, the evidence is not only "to be carried upright," but he uſes the very words of my Lord Coke, and ſays, that it is not meant by him to "*uſe ſtrains of wit*, or by art to ſeek to play prizes."

Gentlemen, having ſtated this to you, as the doctrine upon which this caſe muſt be determined—as the rule by which this evidence muſt be judged, I earneſtly requeſt of you to treaſure it in your minds, for the purpoſe of applying it in the ſequel of this caſe, when I ſhall have the honour of obſerving upon the evidence particularly to you; in the mean time, permit me to lay before you what the nature of this accuſation is, tracing it from its ſource.

My learned friend, the Attorney General, has brought into your notice a perſon of the name of UPTON, whom he has not been able to bring here to day. The indictment itſelf, brings Upton to your notice; and you have heard from the very beſt of all authority, (namely, from the authority of Mr. Attorney General) that if Upton had been examined here, he would have appeared to have been a perſon concerned in this crime, and diſcovering it to the Government of the Country. Such is the ſituation in which this perſon is repreſented to ſtand. Gentlemen, I ſhall have occaſion in the ſequel moſt lamentably indeed to regret that that perſon has not been to be found and examined.

In this part of the cauſe I preſent him to your notice merely for the purpose of calling your attention to the nature of the probabilities in which this caſe is founded; and I think I ſhall be able to demonſtrate to you, on the one hand, that the probabilities are all againſt the exiſtence of ſuch a conſpiracy as is here ſtated, and that, on the other hand, there is no proof, *provably given*, ſufficient to eſtabliſh a contrary concluſion; nor any to ſatisfy your minds in a caſe of blood, in a crime ſuch as this indictment ſets forth, that there is any ground or foundation upon which to reſt a verdict of Guilty; but that it will be your duty to ſend the priſoner forth among his fellow-ſubjects, to paſs the reſt of his life, I truſt, in a conduct which will make it perfectly impoſſible, even, to impute to him any thing like that with which he now ſtands charged.

Gentlemen, I muſt call your attention, upon this occaſion, to the particular character of Upton, founded on what has already been proved in part by the croſs-examination of the witneſſes for the proſecution, and which I will afterwards enforce by farther proof, direct and manifeſt, coming home to the very point, and to the very iſſue in queſtion, I ſhall be enabled to lay before you evidence of the animoſity and hatred which exiſted between Upton and the perſons with whom he is ſuppoſed to have conſpired, of whoſe actions he became, according to the caſe made by the Crown, firſt the accomplice, and afterwards the ſpy. I ſhall be able to prove that Upton was in a ſituation of diſagreement with

Smith,

Smith, of violent altercation with Higgins, and of enmity with Le Maitre: that there was not any thing like acquaintance, intimacy, or confidence between him and the priſoner at the bar; for you will recollect that you have it proved by inconteſtible teſtimony, that the priſoner had been but for a very ſhort time, indeed, acquainted with Upon *.

Now, if I can eſtabliſh to you that he lived in direct enmity with Le Maitre, and that his enmity had gone to ſuch an extent that he had ſent him a challenge to fight him, Le Maitre having accuſed him of heinous crimes,—that Le Maitre had not given him that ſatisfaction which perhaps it might be contended (though I think it hardly could be in a Court of Juſtice), lays all revenge to reſt: If I prove to you, what has not been denied by ſome of the witneſſes for the proſecution, his animoſity to Higgins, and that in fact an enquiry was commenced with great form, and carrying on with great diligence, that had for its object the diſcovery of Upton's crimes, and his expulſion from the Society to which he belonged †, where, he was a member and a ſpy, who might expect to receive emolument: I aſk whether the probability is not ſtrong againſt the exiſtence of ſuch a conſpiracy?—whether you can ſuppoſe conſpirators not only not intimately acquainted, but hardly acquainted at all?—whether you can ſuppoſe conſpirators living in a ſtate of direct en-

* The evidence of Palmer. † The Corresponding Society.

mity

mity with each other?—whether you can ſuppoſe the confidence of conſpiracy to exiſt where enquiry is carrying on which muſt lead to the expoſure, expulſion, and final deſtruction of the very man who was the diſcoverer and the accomplice? I aſk you whether it is poſſible that such a propoſition can, conſiſtently with the common rules of human action, gain belief? If I prove theſe things inconteſtibly, and I pledge myſelf ſo to prove them: I then call upon you for this neceſſary concluſion, that the grand foundation, the principal groundwork of this great crime, namely the probability of its exiſtence, is deſtroyed, annihilated, aboliſhed, and done away: that conſequently, when the foundation is gone, the ſuperſtructure muſt fall; and all that my learned friend * has built upon it, and all that he wiſhes to have you infer from the evidence which he has given, and every circumſtance which he wiſhes you to note as inferring guilt upon the unfortunate perſon at the bar, turns directly the other way. Then I muſt call upon you to apply the doctrine which I have ſhewn to be the law of Lord Coke and Lord Bacon—Then, I ſay, you muſt have manifeſt proof—Then you muſt not decide according *to ſtrains of wit*—Then you muſt ſee that the lanthorn of juſtice (the evidence) is carried clearly before your eyes. I know that I am addreſſing myſelf to twelve perſons who have feelings—who have integrity—who have intelligence—who have diſcernment, who poſſeſs every

* The Attorney General.

quality

quality that can belong to the ſacred and important function in which they are engaged; I am confident, therefore, that if I eſtabliſh in proof what I here ſtate myſelf able to prove, I ſhall efface from their minds all idea of the exiſtence of this conſpiracy, and conſequently of every thing that is founded and built upon this conſpiracy.

Gentlemen, this is not all, this relates only to the improbability of ſuch a conſpiracy having been contrived by theſe *unacquainted, jarring, hoſtile,* conſpirators.

I now requeſt your attention to the probability of ſuch a contrivance, coming from Upton.—What was his ſituation? His conduct was enquired into for crimes of the deepeſt enormity; his enmity will be proved by meſſages of the moſt hoſtile nature; the whole tenor of his life will hold forth a man, who, if he had appeared in that witneſs-box, you would have ſhrunk back from with horror. Theſe, then, are the conſiderations—What was the ſituation of this man?—What was the peculiar time in which he ſpoke?—What is the peculiar turn (as the hiſtory of all ages have proved) of men of that deſcription in ſuch times and in ſuch ſituation? The man, ſuch as I have deſcribed him, had no means of reſcuing himſelf from obloquy but by the fabrication of a plot. He determined, therefore, to turn what he had invented to the wicked purpoſe of crimination. God Almighty knows for what purpoſe he might have ordered the air gun; he was capable of preparing it for

for the vileſt purpoſes, and was equally capable of turning it to any other purpoſe that might ſuit his intereſt or gratify his revenge at the moment. Such is the ſituation in which Upton ſtands; and therefore I eſtabliſh not only the improbability of the conſpiracy exiſting, on account of the ſtate of the parties, on one hand, but I eſtabliſh a manifeſt, a clear, and diſtinct probability of Upton contriving it on the other.

Gentlemen, what was the ſtate of the times? Is it poſſible for any men who love their Country to forget the alarm which ſpread throughout the nation, which ſeemed at once to take poſſeſſion of all ranks and deſcriptions of men? It was in the midſt of that alarm that this plot was contrived; nay, not only ſo, but it was contrived at a moſt particular æra of that alarm. You will recollect, (I am ſure my Lord will recollect) that there was a time when convictions had taken place in a northern part of this Country of perſons tried for High Treaſon; they were tried upon the ground that there had been a conſpiracy againſt the Government of the Country, to deſtroy the Conſtitution, and, by legal inference, therefore aiming at the life of the Sovereign: theſe perſons, Gentlemen, were convicted. There were trials in this Country, where perſons were tried for the ſame crime, and thoſe perſons were acquitted. Gentlemen, I bring nothing into a Court of Juſtice but the duties of an advocate; I make no obſervation here, upon the convictions in one Country, nor

upon

upon the acquittals in the other; I ſtate the fact for this material purpoſe. In the intervening time, when the alarm had taken poſſeſſion of mens' minds, when it had been raiſed to its utmoſt heighth by the convictions in Scotland, which were ſuppoſed to prove the facts in which the alarm was founded, after the trials in England were inſtituted, but before the acquittals here took place, which tended to relieve mens' minds in this country, as to the reality and exiſtence of the cauſe of the alarm; juſt at that intermediate time, was this plot brought forward by Upton,—was this diſcovery made; and till that time it never had been ſurmiſed.

Such being the peculiar time at which the diſcovery of this imaginary plot was made; mark the coincidence of circumſtances. That which will be proved to you to have been the time of accuſation, will be proved to you to have been nearly, or immediately, poſterior to the time of Upton challenging Le Maitre to fight—it will be proved to you to have been the time when Upton was rouſed, not only from a conſideration of perſonal defence and ſafety, but from every other motive, to make the accuſation. Why then I have got, upon the preſent occaſion, theſe three things which eſtabliſh, according to all human probability, that this man invented this plot for his own purpoſes—his perſonal ſafety---his revenge---(the particular circumſtances of the times, at once exciting him,

encouraging him, and protecting him); and the hope of reward. Now I desire you to examine all these different motives; I desire that you will carry them in your minds; I anxiously entreat you to consider their nature, and I am sure you will find, that although they are different motives, yet they are motives which can exist in the same breast at the same time. There is nothing inconsistent in a person being urged at once by personal safety, by the pursuit of revenge, and by the hope of reward, to bring to punishment persons whom he knew to be perfectly and completely innocent:——This is not all. What was the temper of mind at that period? How well was the society in which we live, calculated to encourage a miscreant to bring forward such a contrivance?

In addressing myself to you, I am not speaking to persons who are ignorant of the history of their country, and of the history of mankind; I am speaking to intelligent men, capable of judging of this case in all its views, and in all its possible aspects: and I believe the history of the world does not furnish an instance of a period of strong alarm and apprehension, laying hold of the public mind, without begetting persons of the character of Upton, and that such persons have uniformly taken advantage of the times, in order to answer their own wicked purposes. Gentlemen, I will not lead you out of the history of your own Country; but I am sure I say nothing that has not a

direct

direct analogy and bearing upon this cauſe, when I call upon you to reflect upon the hiſtory of England in the laſt century—when I call upon you to attend to the words of a most eloquent and philoſophic hiſtorian, deſcribingthis Country alarmed in 1670 at the idea of a popiſh plot. There ſprung up at that time, and during that alarm, perſons preciſely anſwering to the deſcription of this abandoned informer Upton. Inſtead of giving my own opinions and ſentiments upon the ſubject, I have recourse to that profound obſerver of human nature, Mr. Hume. His deſcription of that awful period I am ſure you will all realize in your own minds. You may recently have entertained apprehenſions of the ſame kind, but I am not afraid of bringing thoſe apprehenſions back to your minds, becauſe I know the honeſty of your natures will not permit you to let mere ſpeculative fears operate to the priſoner's prejudice, unless you ſee it clear and manifeſt that the caſe is provably eſtabliſhed to have a foundation in reality. The hiſtorian ſays, talking of this Country at the period of the Popiſh plot—" They thought their enemies " were in their boſom, and had actually got poſ- " ſeſſion of their Country. Each breath and ru- " mour made the people ſtart with anxiety. Like " men affrighted, and in the dark, they took every figure for a ſpectre. The terror of each " man became a ſource of terror to another, and

" an univerſal panic being diffuſed, *reaſon and* " *common ſenſe, and common humanity, loſt all in-* " *fluence over them.*"

Gentlmen, ſuch is the ſituation of the public mind upon all ſimilar occaſions. The firſt part of the deſcription paints that which gave this abandoned man UPTON hopes of the ſucceſs of this meaſure. The latter part of it, I know, does not deſcribe the character of the preſent times. Thank God! the judicial improvements of this Country, ſince that period, the integrity of the Judges, the enlightened minds of Juries, the capacity of diſtinguiſhing between guilt and innocence, the openneſs to receive information, the abandoning all ideas of judging upon any facts or impreſſions, except thoſe ariſing in the ſingle cauſe in queſtion, the never coming into, nor going out of Court to deliberate upon the verdict, with any other ideas but thoſe connected with the cauſe, and the cauſe only, the rejection of all prejudices of every ſort, even the neareſt and the most forcible upon the human mind, form, happily form, the judicial character of the preſent times Unfortunately it was not ſo at the time of which the Hiſtorian ſpeaks. Juries and Courts of Juſtice were not then animated with that ſpirit which, now, belongs to them. The annals of that day do not accord with the preſent time. This, thank God, is a bright æra for the hiſtory of Engliſh juriſprudence, and the judicial purity of Jurymen—

Impreſſed

Impreſſed with that conviction I feel no apprehenſion in bringing before you the ſtate of mens' minds in the hour of alarm, to prove to you the tendency that ſuch times have to encourage men like Upton to be the contrivers of unfounded Plots. Becauſe I am convinced that thoſe for whom I plead are as ſafe in your hands as if no ſimilar alarm had exiſted when Upton contrived and publiſhed this plot. If your minds were filled with alarm, I know you will baniſh all ſuch thoughts and decide this queſtion of guilty or not guilty upon the pure unmixed conſideration of the proofs and probabilities.

Gentlemen, I have now, I believe, gone through every circumſtance that relates to the original hiſtory of this caſe; to the ſituation and character of Upton; to the probability of there being no ſuch plot, because the conſpirators were hardly acquainted with each other, and were at enmity with each other; to the improbability of ſuch a plot, upon that account; and to the probability of its being a contrivance, Upton being the contriver. It is now my duty to bring you to the particular evidence in the cauſe, and to call your attention to that evidence, in the different points of view in which it appears to me. Gentlemen, I hope to execute this without being tedious; at the ſame time, as this is the important part of the cause, and as we are all engaged in the diſcharge of a moſt ſolemn duty here, I do most anxiouſly entreat your patience;

and

and I am ſure, my Lord, and I am ſure you, Gentlemen, will pardon me, if I ſhould rather be prolix, than run the riſk of leaving any thing unſaid, that may be for the benefit of the priſoner.

Gentlemen, the witneſſes upon this occaſion are of two ſorts, one ſet of witneſſes were brought to prove that an inſtrument (ſuch as is deſcribed in the indictment) was prepared; another ſet of witneſſes were brought to prove that that inſtrument was meant to be uſed for the particular purpoſe laid in the indictment. You will obſerve, that theſe two ſets of witneſſes ſpeak to facts of a very different ſort. The one set of witneſſes, thoſe who prove the inſtrument, ſpeak to facts which paſſed before their eyes, but with regard to any uſe of the inſtrument, with regard to any colour given as to the criminal purpose for which that inſtrument was prepared, or any application of that inſtrument, they ſtate no fact whatever. The other ſet of witneſſes ſpeak merely to declarations. You will observe, therefore, upon this caſe, that the evidence of fact only eſtabliſhes the making of a particular inſtrument; how far these facts bring it home to the priſoner, is a queſtion for me to diſcuſs, and for you to try, while the evidence of confeſſion or the evidence of declaration is that which tends to eſtabliſh the uſe of it.

Inſtead of examining the evidence in the order in which it is called, I will take the liberty of claſſing the witneſſes according to the different nature

nature of their teſtimony, for the purpoſe of applying their evidence particularly to theſe two diſtinct parts of the proof; because different obſervations, different rules of probability, and different principles, apply to the one ſet of witneſſes, and the other owing to the nature of the ſubject ſo proved being different, and owing to the different mode by which the queſtion is proved.

Gentlemen, the firſt witneſs who is called to you, is a person of the name of Dowding, that perſon you will recollect did not ſpeak of any thing, particularly, being prepared; he did not ſpeak at all to the priſoner at the bar; he only ſaid, that three perſons came, and he said that Upton was the principal ſpokesman, and he particularly said, when it was mentioned that it was a ſecret, that Upton was the perſon who ſaid ſo: but you observe, that this person likewise ſtated a very material fact; he ſtated that they haggled and talked about the price; and thought it too dear. Now I would wiſh to call your attention coolly and deliberately to that fact; mark what the nature of the charge is, an important and terrible charge, (if it is a true one) but one which must be bottomed, in a deſign which has ſome view and object, and has for its foundation ſomething more than the meeting of four obſcure individials, for the purpoſe of contriving this extraordinary plot. Yet no evidence whatever is given to you, that any perſons nam-

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ed in this indictment, or that any body at all was concerned in it but the priſoner (if the priſoner was concerned in it) and Upton. Such is the nature of the ſubject which they were ſuppoſed to be talking to Dowding about. What does Dowding ſay? he ſays they haggled about the price: now I ask you as judges of human nature, I aſk you as men capable of weighing the import of human actions and of human conduct; whether it is a natural thing, that perſons carrying on ſuch a plot as this, a plot going to ſuch an extent, a plot founded, neceſſarily in an extenſive plan of revolution, a plot connected with such circumſtances, could be influenced by the price of a ſmall metal tube, or that a few ſhillings one way, or a few ſhillings the other, could be at all an object. That fact, in my opinion, tends to eſtabliſh a ſtrong negative to the poſſibility of their being any ſuch thing exiſting in the minds of theſe people, as that which is attempted to be proved: but you obſerve that Dowding proves nothing actually done, and here is an end of my obſervation on Dowding's evidence.

The next perſon produced is Bland; by his evidence you obſerve, that nothing is proved to be done, only two were present at that converſation, Palmer remained behind, and Palmer accounted to you in his evidence why he remained a ſhort time behind, the two others, for the very ſhort time which Palmer remained behind, were in the houſe with Bland. Palmer came and enquired

quired after them, they were gone, but Bland could not tell where. Palmer went into the ſtreet and ſaw them, and ſeeing them he overtook them, conſequently the converſation could not have laſted above a very few minutes, but Palmer was not preſent there.

Now Palmer is ſuppoſed to have been a perſon concerned in this plot, Palmer, as well as Upton, is ſuppoſed to have been acquainted with the particular object and deſign that the priſoner is charged with. Is it not then a moſt extraordinary thing —is it not contrary to all probabilities—is it not contrary to the courſe and nature of man's conduct in affairs—that, in a ſcheme of this kind, bottomed in an intent to take away the life of the King; (that terrible and dreadful act, which one can hardly mention without ſhuddering) which muſt have been founded in an intention to overturn the ſtate; probably in connection with people and with powers, who were anxious that this ſcheme ſhould be carried into execution, that the conſpirators in that very ſcheme, that Mr. Palmer, a perſon uſhered in by the Attorney General in his opening ſpeech, and examined by Mr. Garrow as if he had been a witness of mine, and under croſs-examination, and not a witneſs examined in chief, for the Crown; that of theſe conſpirators, Palmer was ſo little attentive to the object of this conſpiracy, that he ſtaid behind for the reaſon given in his evidence*; that he ſhould not know to what place they

* I recollect I had a *natural* occasion to stop.

were bent next, and that when he did not find them in the houſe, it was only by ſeeing them in the ſtreet and overtaking them, that he found his way to the place where they were next going.

I would wiſh you next to attend to the evidence of Cuthbert—Cuthbert, you obſerve, is a perſon who makes inſtruments, and particularly makes air inſtruments; he ſpoke concerning an air-pump; Cuthbert has nothing to do with the making of this inſtrument, he has nothing to do with this ſuppoſed conſpiracy; he does not give any proof whatever of the fact of fabricating the machine—none whatever. But he ſtates to you, that he had occaſion to go to Upton for a particular purpoſe; namely, to pay him money, which was to be paid over to the wives and children of the perſons who were confined in Newgate, for the Treaſons that were formerly tried: that obſerving Upton to be a watch maker he invited Upton to come to his house to ſee ſome of his machinery,—that he ſoon diſcovered Upton to be a diſagreeable perſon; that when Upton called the ſecond time he took little notice of him; that he remained upon his ſeat all the time; but he eſtabliſhes this important fact, that Upton, and the perſon who came with him, appear to have been moſt completely ignorant of every thing with regard to the power of air; he proves, at the ſame time, that they did not go there with the intent of learning what the power of air was. He negatives that intent expreſsly; becauſe he eſtabliſhes this fact, that Upton went

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at the particular invitation of the witness Cuthbert; ſuch is the nature of this evidence.

Then I ſay we have now proved conſpirators contriving a machine of deſtruction, who were ignorant of the very principles of the machine which they were to uſe,—conſpirators going to the ſhop of a mechanic, not with a view to learn the principle upon which this machine was to be conſtructed, but going upon the particular invitation of the perſon, as a matter of curiosity. Here is another obſervation which I am ſure you will make, when you come to conſider whether this caſe is proved provably or not. Cuthbert's teſtimony is produced merely for the particular purpoſe of giving colour to their ſpeculation, and it proves their ignorance of firſt principles. He does not prove that Croſsfield was one of the two; and he does not ſpeak to the particular queſtion of the fabrication of the machine.

Gentlemen, as I am now upon the teſtimony of this witneſs, I will ſtate one other circumſtance. In anſwer to a queſtion of my Learned Friend on the other ſide, he ſaid, that when at the Privy Council, there was one Dennis there, and that he did not know the priſoner—he had not the leaſt idea of him—he only knew that a perſon came to his ſhop with Upton, but could not tell whether the priſoner was that perſon; but he ſays, that Dennis was at the Privy Council, when a perſon, whom Dennis called Croſsfield, walked through the ſame

room, and then he ſaid with great anger, "there he goes," the witneſs aſked "who," Dennis ſaid, "Croſsfield, damn him, I ſhould know him if it were his aſhes burnt."

I come now to the evidence of Joſeph Flint; there again there was a ſhort converſation, and nothing was proved to be done, and he ſpeaks poſitively to the lame man being the ſpokeſman, and does not identify the priſoner.

Gentlemen, the next witneſs to whom I ſhall call your attention, is Mr. Palmer; my Learned Friend the Attorney General in opening, (and certainly the manner in which that witneſs was treated correſponded exactly with his opening) ſtated, that he might be under the neceſſity of calling ſome witneſſes who ſtood in a particular ſituation and connection; and therefore it might be difficult to obtain the truth from them. An obſervation was made in the examination of that witneſs, which I am ſure muſt have made an impreſſion upon your minds, from the height from which it fell*. It was this, that the Crown cannot diſcredit their own witneſs in any thing, without loſing the benefit of that witneſs's teſtimony. I am not reſponſible for Palmer's conduct or his character—He is the witneſs of the proſecution; but I will ſtate what he proved, and ſuch obſervations as occur to me upon what he proved.

You will obſerve, in the firſt place, that Palmer

* Ld. Ch. Just. Eyre.

aſcertained

aſcertained this fact without leaving any doubt upon the mind of any man who heard him; he aſcertained that Mr. Croſsfield's perſonal acquaintance with Upton was of very ſhort duration. He could not even ſtate it to extend to a month. This you will recollect is one of the facts which I called to my aid, in that part of the caſe, on which I have already addreſſed you; namely, the improbability of perſons ſtanding in that relative ſituation, conſpiring together for ſuch a purpoſe as this; for ſurely if any thing requires mutual confidence, it is a conſpiracy; and if any conſpiracy requires mutual confidence, it is the ſort of conſpiracy which is now the ſubject of inveſtigation. Palmer likewiſe eſtabliſhes another thing very material as to this deſign, and eſtabliſhes it without leaving a doubt; namely, that they dined that day in the neighbourhood of Temple Bar; that it was mere accident which led them to viſit Upton; that he went there for the purpoſe of having a watch repaired; and that they walked with Upton into the city: that, in ſhort, this, ſo far from appearing to be any thing like a deſigned, was a mere accidental meeting. He then ſtates to you the various circumſtances with reſpect to their going from place to place, but he can give no particular account of what paſſed upon that occaſion; and as far as he goes, there certainly is not any colour to ſay that the inſtrument, ſaid to be in preparation, was either ordered by the priſoner, or that he had any hand

in

in the ordering of it, or that he ſtood in any other relation than that of an accidental companion of Upton in thoſe interviews. Where then is the leaſt ground for the inference of a guilty deſign? With regard to the particular uſe and ſuppoſed purpoſes of the inſtrument, he ſays nothing that could lead to a concluſion—that it was made with the view and the intention laid in the indictment.

Mr. Palmer likewiſe proves to you the bad ſtate of Mr. Croſsfield's health; the ruined ſtate of Mr. Croſsfield's circumſtances; the ſituation in which Mr. Croſsfield was, before this conſpiracy is ſuppoſed to have taken place, or at leaſt before the diſcovery; and that in which he continues, to the time of his leaving England. With regard to those last mentioned particulars of Palmer's evidence, I ſhall pass them over at present, because they apply more properly to another part of the case, which is most material for your conſideration; namely, the demeanour of the priſoner at the bar, throughout the whole of this tranſaction.

Gentlemen, before I go on, permit me to call your attention particularly to dates; I wiſh you to remember that Mr. Ward ſaid, he firſt went to Mr. Pitt upon Saturday the 12th of September—that he ſaw him on Wedneſday the 16th. It will be proved, that Le Maitre and Higgins were apprehended the 27th of September; that Smith was apprehended the 28th; and it will be proved that the advertiſement for a reward for the ſeizing of Mr. Croſsfield, was

not

not till late in the month of February. Gentlemen, I desire you at present to attend to those dates, because in the sequel of what I have to address to you, I shall be under the necessity of making observations of some considerable importance with regard to them.

I now come to the evidence of Thomas Hill; you will recollect he was the person employed to make the model in wood—you will observe, that, throughout the whole of Hill's evidence, Upton is the person who gives the orders respecting the instrument; that Upton is the person who said he should be paid; that Upton's is the house to which he carried it; that Upton is the person to whom he applied for payment; and you will recollect, likewise, that he had no knowledge whatever of the prisoner; that the prisoner did not interfere in the business at all, except with respect to some directions in aiding Upton when he was giving the description; but he did not seem to take any particular part in it. You will observe, likewise (for I am sure I state the evidence fairly and correctly), that all he said upon that occasion was, that the stranger might do something; but he spoke from a faint recollection.

If Hill has proved any thing, he has only proved the existence of a model, he has not proved the use of it, or the application of it—so little has he proved the use of it, that a scientific man, Mr. Mortimer, who wished to give us last night an ostentatious sample of his scientific knowledge unnecessary

neſſary for the occaſion, told you expreſsly, that if he had been aſked, without deſcribing them, what uſe theſe models were meant for, it would have been impoſſible for him to have aſcertained or even conceived their uſe or application.

Lord Chief Juſtice Eyre. You miſapprehend the evidence there, and making obſervations upon the evidence not founded in the fact, is injurious to your cauſe.

Mr. Adam. I do not mean to miſapprehend the evidence.

Lord Chief Juſtice Eyre. He did not ſay, that he could not have known the uſe of the models; but ſaid, he could not have known that theſe models were prepared from thoſe drawings.

Mr. Adam. I am exceſſively obliged to your Lordſhip moſt undoubtedly. I aſked him, upon croſs-examination, ſhewing him the roller, if he could have known, from looking upon that roller, for what purpoſe it was intended—I think his anſwer was, he could not.

Lord Chief Juſtice Eyre. You miſapprehend him—he ſaid, he believed it was for a piſton for an air-gun, that taken together, with finding the tube, it was ſatisfactory to him that it was ſo, but without finding the tube it was not ſo ſatisfactory, but that that was his opinion—what he ſaid with regard to not knowing it was, the drawing was ſo bad, he ſhould not have known that the model was prepared from the drawing, unleſs he had

had been told that they had had converſation upon the ſubject.

Mr. Adam. You have heard from my Lord the evidence to which I was alluding, with reſpect to Mr. Mortimer, and the obſervation I have to make upon it,as applicable to the evidence of Hill, is this —that Hill undoubtedly, from Mr. Mortimer's evidence, could not conclude any thing as to the uſe of the inſtrument, Hill being an ignorant man. Conſequently all that appears from Hill's evidence is, that ſomething was made, and you will recollect,becauſe it is important in the ſequel of what I have to addreſs to you, that Hill, as far as I am able to trace the evidence, is the only perſon who ſpeaks to the actual fabrication, or who aſcertains the actual making of any part of the inſtrument laid in the indictment—I mean with this diſtinction, the diſtinction of general confeſſions, upon which I ſhall obſerve hereafter.

Gentlemen, the next witneſs, though not the next in order, whoſe evidence I ſhall call to your attention, is Mrs. Upton, and upon the preſent occaſion I wish merely to ſtate this—Mrs. Upton was called principally to prove her huſband's death; but ſhe was examined to ſome other circumſtances, particularly to ſome of the inſtruments, produced, having been in the houſe of Upton; and you will recollect that ſhe could ſwear to none of them but the models; that ſhe could not ſwear to the drawings, nor to the tube, conſequently,

ſhe carries the formation of the inſtrument no farther than Hill did.

With reſpect to what ſhe ſaid regarding her huſband, that I ſhall have occaſion to obſerve upon by and by, when I come to ſtate the evidence which I ſhall be under the neceſſity of laying before you. I ſhall, therefore, reſerve that part of her teſtimony to that part of the caſe.

Gentlemen, I beg leave now ſhortly to refer to the evidence of Steers and Puſey, who were called in order to ſhew that Upton, at a meeting of the Correſponding Society, had, in his poſſeſſion, ſomething reſembling the tube; for that was all that the evidence amounted to. Now, whether it was or was not the tube (upon the view which I take of this caſe), is a matter of no conſequence. I bottom myſelf throughout in the malignity and wickedneſs of Upton's character; and on his character, combined with facts and circumſtances, I aſſert, that he might have contrived ſuch an inſtrument for a wicked purpoſe, and might afterwards convert it to the injury of others, for the gratification of his own revenge. As long as I found my caſe upon that principle, I contend that it is a matter indifferent to me, as ſtanding, here, for the priſoner, whether this was proved poſitively, or left in a ſtate of ambiguity and doubt. It does not come home to the priſoner, he was not at the Correſponding Society upon the occaſion. It does not come home to the Correſponding Society, not one of them is accuſed, nor is the Society ſuppoſed to be concerned

concerned in this conſpiracy. It does not come home to one of the individuals charged in this indictment, for not one of them is ſtated to be preſent upon that occaſion. In ſhort, it is a ſtory which relates diſtinctly and ſingly to Upton, which belongs to his wickedneſs, which belongs to his malignity, which is founded in the advantage he thought to take of thoſe he conceived to be his enemies. The tube was cunningly and ſecretly ſhewn by him to raiſe ſuſpicion; not openly produced, but peeping from under his coat; the very mode which a falſe accuſer would adopt. Therefore, I contend, that every thing which is to be drawn from the doubtful evidence of theſe perſons, with regard to the exiſtence of this particular thing, and what it was (for my Lord examined them particularly to what it was, and they ſaid, they rather believed it to be a tube, but could not ſpeak certainly to it), is evidence, that can have no weight in this caſe, as far as it regards the priſoner at the bar; what it does prove is that Upton was actuated by ſome black and vindictive purpoſe.

I come now to the evidence of Mr. Ward, which merely proved that he received information of this ſuppoſed conſpiracy from Upton; that he communicated that information to his Majeſty's Miniſters, and that in conſequence of it the ſeveral perſons were committed at ſome ſubſequent time. You will always obſerve, however, ſomething ſingular in this caſe; that the information was given upon the 12th; that it was not com-

municated undoubtedly, as appears, till the 16th, but that none of the parties were ſeized till the 27th; and that there was no reward offered for apprehending the priſoner till the end of February; and I contend that the laſt is a moſt important fact in this caſe; becauſe it ſhews, that whatever the diabolical intention of Upton might have been; that whatever the circumſtances of the caſe might have been at that time; at leaſt they had not an idea that there was then evidence laid before them to juſtify the ſeizing the priſoner. Therefore, when I ſhall come to examine his demeanour, after the apprehenſion of the three other priſoners, you will always bear this in your mind, that no ground of ſuſpicion of Mr. Croſsfield can be proved to have exiſted, until ſuch time as his Majeſty's Miniſters offered a reward, to take him, otherwiſe they muſt be ſuppoſed negligent of their duty.

Gentlemen, on the review of all this evidence, I wiſh to draw your attention to what is proved with regard to what may be called the *inſtrumental* part of the teſtimony; that is to ſay, the fabrication of the inſtrument, and, I think, you muſt neceſſarily agree with me, that with reſpect to the fabrication there is but one witneſs who ſpeaks poſitively to it, and that one witneſs ſpeaks only to a ſmall part of it, the model. He does not ſpeak at all to the uſe, or to the purpoſe of it, or do any other of the *inſtrumentary* witneſſes. The ſingle witneſs who ſpeaks to it, I ſay, is Hill; for with

with regard to the fabrication of the other part, I mean the arrow, which forms a moſt eſſential ingredient in this caſe; becauſe, without it, the means were not complete to the end; I ſay, that the uſe to which the inſtrument was to be applied reſts entirely upon that part of the evidence to which I am now about to come, namely, the confeſſional evidence, the priſoner's declarations.

Upon this part of the caſe I conjure your attention—I ſhall endeavour to impreſs it ſtrongly upon your minds, becauſe I am ſtrongly impreſſed with it myſelf. The nature of confeſſional evidence, or evidence of declaration ſuch as this, is to be well weighed in a queſtion of any ſort. In a queſtion of this particular nature, where the overt act of fabrication reſts on the teſtimony of one witneſs only, I ſhall contend, and I think ſucceſsfully, that it is not at all to be credited; and that it is impoſſible for grave, ſerious, intelligent men, like you, laying your hands upon your hearts, in ſolemn judgment upon the life of that unfortunate perſon, to ſay, that there is that clear, diſtinct, manifeſt evidence, which, according to my Lord Coke and Lord Bacon, amounts to proving an overt act of Treaſon *provably*; for you are not, as Lord Coke tells you, to deal in probabilities, you are not to deal in conjecture, but you are to ſay to yourſelves, in the ſolemn moment of deliberation, do or do not theſe facts, prove *provably*, *manifeſtly*, and *inconteſtibly*, the guilt of the priſoner at the bar.

Upon the confeſſional evidence, you will obſerve,

ſerve, that there were four witneſſes, Le Bretton, Dennis, Winter, and Penny; theſe were the four witneſſes to prove the declarations of the priſoner. Permit me, again and again, to obſerve, that this evidence of declaration is very doubtful in its nature; I am ſure I do not advance any thing in which I ſhall be contradicted, by any authority in this Court, when I ſay, that it is to be taken with great conſideration on all occaſions as a proof of fact or intention.

Gentlemen, I have already called your attention to the important and ſignificant words in the ſtatute of Edward III. I have read to you the commentary of Sir Edward Coke, of almoſt equal authority with the text. You find with what anxious ſolicitude he diſtinguiſhes between the words probably and provably. Unleſs we accuſe that great lawyer of vague, unmeaning expreſſions, we muſt affix a preciſe ſenſe to the word on which he dwells with ſo much force: he muſt mean the higheſt evidence of which the nature of the thing is capable; he muſt mean that which is termed legal demonſtration, ſuch demonſtration as parol teſtimony affords. Now I wiſh to preſent correctly to your minds the nature of ſuch demonſtration: it amounts to this—that if the witneſs ſpeaks truth, the fact to which he ſpeaks muſt be true. For example, in a caſe of High Treaſon, if it is proved that ſuch a perſon has been out in rebellion againſt the Sovereign, that fact is proved provably—it is proved

proved according to the idea of legal demonſtration; becauſe if the witneſs ſpeaks truth, the fact muſt be true. But when evidence is given to a confeſſion, obſerve what the natnre of it is: the perſon who gives the teſtimony may ſpeak truly, and yet the fact may not be true; becauſe the fact does not depend merely upon the ſtatement of the witneſs, it depends upon the ſtatement of another perſon, who has ſtated the thing to the witneſs. This principle creates the neceſſity to receive with great deliberation, and even with conſiderable heſitation and doubt, all evidence of confeſſion.

But, Gentlemen, this goes much further, and is not founded in any abſtract principle of law—not in any difficult conception, or abſtract train of reaſoning; it is obviouſly founded in the nature of things. Confeſſional evidence is ſuch, that not only the perſon who makes the confeſſion muſt be clear from all motives either of hope or of fear, but his mind muſt be ſo tinctured, ſo prepared, that you ſhall believe what he confeſſes to be correctly and accurately true. The perſon making the declaration muſt not be led by hope, on the one hand, or fear on the other, to ſtate circumſtances that may make in his favour: and, on the other hand, the mind which is to receive the confeſſion, the perſon to whom it is made, muſt have an accurate, diſtinct mind, capable of carrying it away with preciſion of reporting faithfully, without exaggeration or miſrepreſentation. You will obſerve

obſerve, too, in all evidence of confeſſion, the nature of it is ſuch, that it is next to impoſſible to convict for perjury on account of ſuch teſtimony. What is the ſecurity afforded by the law, that witneſſes ſhall ſpeak truth in a Court of Juſtice? It is this, that they come here under the terror of a penal proſecution if they do *not* ſpeak the truth. A witneſs who comes to ſpeak to a confeſſion, comes to give evidence to that which, from the very nature of it, cannot be *negatived*. becauſe it is impoſſible for any one to ſwear a perſon did not ſay ſuch or ſuch a thing, all he can ſay is, *negatively*, that he did not hear it; conſequently the perſon who ſpeaks to the declaration, gives his teſtimony without thoſe riſks of penal proceeding: he is ſafe from the reſtraints and terrors of the law.

Gentlemen, if you apply this general reaſoning to the preſent caſe, obſerve how ſtrongly it bears upon it. Conſider what the nature of the queſtion is which you have to try. It is whether the priſoner propoſed to prepare the inſtrument for the purpoſe ſet forth in the indictment—In other words, whether that inſtrument, which was innocent in itſelf, perhaps meant for purpoſes of experiment, was now prepared for a particular criminal purpoſe. The purpoſe is proved merely from the declarations of the priſoner, there is no other evidence tending to impute the guilty motives which actuated the ſuppoſed conſpirators. Such declarations are (as I have already ſtated)

evidence

evidence, for which it is next to impoſſible to convict a falſe witneſs of perjury. In addition to this, it is to be obſerved, that the intention of the mind in this caſe is not like the ordinary caſes of Treaſon, in which the fact, if proved, contains evidence of the traiterous mind—In ſuch a caſe it is only neceſſary to prove the fact, and the intention is proved with it; but in this caſe you may have received proof of the fact, of making the air gun, and the intention ſtill remains unproved—the proving a plan to prepare an inſtrument does not prove a traiterous purpoſe—that muſt be proved by thoſe who are ſuppoſed to know the purpoſe—Now the proof of the purpoſe reſts in the witneſs's mind; which you cannot examine by any external criterion which will try its truth or falſehood—Here again, therefore, the witneſs is ſecure againſt a conviction for perjury—So that in this caſe the ſecurity againſt falſe teſtimony is removed in a double view—Firſt, as to the proof of intent. Secondly, as to the teſtimony of declaration or confeſſion—and both unite in the caſe of that unfortunate gentleman.

Gentlemen, there is another obſervation material for your conſideration. We all know how very liable mankind is to exaggerate a ſtory: we all know perfectly well how difficult it is for a ſtory to be twice told exactly in the ſame words: confeſſion or declaration is a mere ſtory told. If the confeſſion relates to a particular, diſtinct, ſubſtantive fact, perhaps the witneſs may be able to bear it

in his memory, if his nature does not incline him to falſify it; but if he does falſify, it will be very difficult to contradict him by negative teſtimony; but if the confeſſion relates to ſomething more intricate than a particular fact, it is ſure never to be repeated twice without ſome variation. Every day's experience, on every common report, demonſtrates the truth of this aſſertion.

Gentlemen, there is a great difference in confeſſion, according to the ſubject matter to which it is applied. If confeſſion is applied to common and ordinary occurrences, in which the mind of man is not much intereſted—in which the propenſity to exaggeration (that natural bias of the human mind) is not neceſſarily excited, an attentive liſtener may be a correct reporter. But conſider how different this caſe is: here is a confeſſion relating to High Treaſon; a ſubject which lays ſtrong hold of the human mind: here is a narrative relating to a great perſonage, the firſt and the beſt perſon in his dominions; upon whoſe exiſtence the ſafety of the ſociety in which we live depends; who has diſplayed every virtue during a long reign, and whoſe life could not be violently and ſuddenly taken away by traitors without expoſing the ſtate to the moſt dreadful and calamitous conſequences. What ſubject ſo likely to lay hold of the imagination, and to lead to the exceſs of thoſe failings which are incident, perhaps, in ſuch a caſe, honourable, to the nature of man!

Conſider,

Conſider, too, that the priſoner at that time (for I ſhall have occaſion to ſpeak hereafter of his demeanour) was in a ſituation where he might be flattered with a hope that particular repreſentations might be favourable to him, and that he might thereby alleviate that captivity into which he had fallen. Gentlemen, I feel all this ſo deeply impreſſed upon my own mind, I feel it ſo much a part of my duty to be well founded in thoſe topics, that I am anxious to carry you beyond the authority of the Counſel for the priſoner. I am deſirous to follow the example of my learned friend, the Attorney General, and to ſhew you from grave, legal authority—not the ſpeech of an advocate, but the deliberate opinions of judges, of the wiſeſt and beſt lawyers that ever diſpenſed juſtice in this country—that my principles are correct.

The firſt authority to which I ſhall refer you upon the preſent occaſion is Mr. Juſtice Blackſtone; who, in his fourth volume, in which he treats of crimes, ſays with regard to confeſſion—"But haſty, unguarded confeſſions, made to per "ſons having no authority, ought not to be *ad-* "*mitted* as evidence under this ſtatute:" he is there talking of the ſtatute in queſtion:—I do not now apply it with regard to the queſtion of admiſſibility or inadmiſſibility. The evidence is legally admitted under the authority of the judge who preſides here. But I apply it as it regards the credibility attached to the evidence, and not to the admiſſibility of it.

Mr. Juſtice Blackſtone, on the ſame topic, goes on to ſay—" But haſty, unguarded confeſſions, " made to perſons having no authority, ought not " to be admitted as evidence under this ſtatute ; " and, indeed, even in caſes of felony, at the " common law, *they are the weakeſt and moſt " ſuſpicious of all teſtimony*—ever liable to be ob- " tained by artifice, falſe hopes, promiſes of fa- " vour or menaces—ſeldom remembered ac- " accurately, or reported with due preciſion, and " incapable in their nature of being diſproved by " other negative evidence."

Gentlemen, it has lately been laid down in the very place in which I am ſpeaking, from very high authority, exactly in the ſame manner. In Mr. Leach's edition of Hawkin's Pleas of the Crown, O. B. 1786—" A confeſſion, whether made on " official examination, or in diſcourſe with private " perſons, which is obtained either by the flattery " of hope or the impreſſions of fear, is not ad- " miſſible evidence."

Gentlemen, I again ſtate that I do not now contend for the admiſſibility of the evidence; I am only ſhewing you how lawyers of great eminence have laid down the doctrine with regard to its being admiſſible or inadmiſſible; in order to perſuade you that in this caſe no credit is due to the teſtimony laid before you.

I come now, laſt of all, to the author relied upon by the Attorney General.

Mr. Juſtice Foſter ſays—" Words are tranſient

" and

" and fleeting as the wind; they are frequently " the effect of ſudden tranſport, eaſily miſunder- " ſtood, and often miſreported." He, upon this occaſion, is not talking of words with a view to their being treaſonable or not treaſonable, but when he uſes the marked expreſſions to which I have referred, he is ſpeaking of proſecutions for ſeditious words. Now, if words in one view are of that nature, all confeſſional evidence, all declaration is exactly of the ſame nature; becauſe all declarations conſiſt of words. But, upon the preſent occaſion, the declarations extend to a conſiderable length; their weight depends upon the preciſion and accuracy with which the words are reported; and I contend, therefore, that the doctrine applicable to words, as laid down here, " to be eaſily " miſunderſtood, and often miſreported," is applicable to declarations and confeſſions of every ſort.

Gentlemen, in another part of this moſt excellent book, he lays down the principle correctly and accurately. In the caſe of Willis, tried for High Treaſon, it occurred to conſider whether a confeſſion is evidence proper to be left to a jury or not, under particular cirumſtances, which I may have occaſion by-and by to ſtate. Mr. Juſtice Foſter, after diſcuſ- " ſing that caſe, which it is unneceſſary for me to " trouble you with at preſent, ſays—" The reader " ſees that opinions have been various touching " the ſufficiency of this ſort of evidence, that is " the admiſſibility of confeſſions; but perhaps it

" may

" may be now too late to controvert the authori-
" ty of the opinion in 1716, warranted as it hath
" been by the late precedents; all I inſiſt on is,
" that the rule ſhould never be carried further
" than that caſe warranteth—never further than
" *to a confeſſion made during the ſolemnity of an*
" *examination before a Magiſtrate, or a perſon hav-*
" *ing authority to take it, when the party may be*
" *preſumed to be properly upon his guard, and ap-*
" *prized of the danger in which he ſtandeth,* which
" was an ingredient in the caſe of Francia and of
" Gregg, cited in the argument in Francia's caſe."
He then goes on to give the reaſon, and he gives it in his ſimple and eloquent manner—" For haſty
" confeſſions, made to perſons having, no authori-
" ty to examine, are the weakeſt and moſt ſuſpi-
" cious of all evidence; proof may be too eaſily
" procured." I beg, Gentlemen, you will mark the words:—" Words are often miſreported;
" whether through ignorance, inattention, or ma-
" lice, it mattereth not to the defendant—he is
" equally affected in either caſe, and they are ex-
" tremely liable to miſconſtruction; and withal
" this evidence is not, in the ordinary courſe of
" things, to be diſproved by that ſort of *negative*
" *evidence* by which the proof of plain facts may
" be, and is, ſo often confronted."

Why then, Gentlemen, I have, upon the preſent occaſion, the opinion of the author, upon whom Mr. Attorney General relies, expreſſed in the moſt ſolemn

lemn and emphatic language, enforcing the doctrine which I have taken the liberty of laying down. You ſee, from Mr. Juſtice Foſter, that there was a time when there was a queſtion with regard to the admiſſibility of confeſſional teſtimony: you ſee his opinion with regard to the admiſſibility of that teſtimony. Whenever there is a queſtion as to the admiſſibility or inadmiſſibility, the competency or incompetency, of evidence, it neceſſarily involves the queſtion of credit. If the queſtion of admiſſibility is got over, then the evidence goes to the Jury, but it goes to the Jury clogged with every argument againſt its credit that could have been applied to the admiſſibility of the teſtimony—it goes to the Jury liable to every obſervation that could have been made to the judge, in order to prevent him from receiving it. I am ſure, therefore, that I am in my proper place, when, upon the effect of this confeſſional teſtimony, I am addreſſing you upon general principles, derived from the works of learned and ſound lawyers; deliberated upon and ſet down in their writings in the moſt grave and moſt ſerious moments, and in the contemplation of caſes preciſely ſimilar to the preſent. Therefore, in the language of my Lord Chief Juſtice Hale, (who lays down the ſame doctrine, with Foſter, but whom I do not trouble you with citing at length upon the preſent occaſion), talking of the bleſſings of our conſtitutional mode of trial, particularly applying it to Treaſon, "Juries are not only triers of the cauſe, but they

they are triers of the credit of the witneſſes; nay they are not only triers of the credit of the witneſſes, but they are triers of the credit of the facts."

Thus I come round again to the principle from which I took my departure, namely, that in point of legal demonſtration, the intention is not *provably* proved; becauſe legal demonſtration is that by which, if the witneſs ſpeaks true, the facts muſt be true: but in the caſe of confeſſional evidence, the witneſs may ſpeak true, and yet the fact may be utterly falſe. The effect of evidence of declarations depends on two things—upon the mind which conveys—and upon the mind which receives—and then it is to be weighed with a conſideration of thoſe other circumſtances which I have taken the liberty of ſtating and enforcing; namely, that it is unrepellable by negative evidence—that it is next to impoſſible to convict for perjury on ſuch teſtimony. Gentlemen, you have in this caſe an example to warn you as to the fallibility of this ſort of evidence. The old man who came here to give teſtimony to theſe moſt grave and ſerious declarations, in which correctneſs conſtitutes the moſt important and principal quality, of which it is the eſſence, may as well be believed with regard to the incredible ſtory he told about the HARE having lived amidſt the dogs, without being touched by them, as to what he has ſtated reſpecting the converſation of the priſoner *.

Gentlemen,

* *Q.* Do you remember any thing about the story of a hare,
A. No.

Gentlemen, I muſt anxiouſly preſs the doubtful nature of ſuch teſtimony upon your minds, becauſe I am perfectly confident that honeſt, juſt, and humane men, like you, will not touch a hair

A. No.

Q. You do not remember any thing of a story that used to entertain the company very much, about a hare jumping into your lap?

A. No, only into my arm.

Q. What was that story?

A. I was coming through Uplime to Lime, in my way from Axminster, just as I had got to a wall, I stopped to make water, as I was buttoning up the fall of my breeches, a hare came through my arm, I catched him by the leg and turned him round, it was about twelve o'clock at night, I threw him in over the gate in among a parcel of dogs, and he remained there that night, and the next day, just as the parson was going away to church, the hare got out, and the dogs followed it all through Lime, there they catched the hare and it was carried up.

Q. Then you threw the hare over the wall among the dogs?

A. Yes.

Q. How long did the hare remain among the dogs?

A. Till after dinner.

Q. This was a story that used to amuse the company very much?

A. Yes; I have told it oftentimes.

Q. What did you take this hare to be?

A. I could find nothing of him till after I was going to church; I was just got as far as the shambles when I heard the dogs out in full cry after the hare.

Q. After she had lodged very comfortably among them for many hours?

A. Yes; after the bones had been carried out to the dogs, which, I suppose, drew the dogs out.

 Q. What

hair of that man's head if you are convinced that the caſe is only *probably* proved: that you will require to be convinced that it is *provably* proved; that is to ſay, that the facts upon which the intention depends muſt be ſuch facts as are true from the very nature of the teſtimony.

Gentlemen, Mr. Juſtice Foſter ſays, (as you have heard from the book), evidence of confeſſion is corroborative evidence. What does he mean by that expreſſion?—He means that it is auxiliary evidence. Auxiliary evidence for what?

Q. What did you tell those gentlemen you took this hare to be?

A. To be a hare.

Q. How did you think this extraordinary hare could live so long among the dogs without being destroyed?

A. If you send to Lime, if any gentleman diſputes my veracity, there they will get a voucher for it.

Lord Chief Juſtice Eyre. The gentleman aſks you what you took the hare for; I ſuppoſe he means to aſk you whether you took her for a witch?

A. They ſay the place is troubled; now I took it to be an old hare.

Mr. Adam. Did not you uſe to tell thoſe gentlemen, in the courſe of converſation, that you took this hare to be a witch, or the devil in the ſhape of a hare?

A. No; it was an old hare that had been hunted many times by the dogs, and they never could catch him; if you want a voucher for it, if you ſend to Lime, you may get vouchers.

Lord Chief Juſtice Eyre. Where did you throw this hare into?

A. Over a place ſeven feet high, among a kennel of hounds, and it was twelve o'clock at night.

To

To aſſiſt the overt acts previouſly eſtabliſhed. Does he not, then, when he uſes that word corroborative in 1756, mean the ſame thing that Lord Coke did, when he ſaid, two centuries before that period, that Treaſon muſt be proved *provably*. Mr. Juſtice Blackſtone confirms the doctrine; and it is acknowledged by the quotation from Hawkins, in 1786. I have, then, the whole hiſtory of the law in my favour; the words of the ſtatute in my favour; and the expoſition of the ſtatute as delivered by Lord Coke: I have the doctrine of criminal juriſprudence, as carried into a Court of Juſtice by the enlightened and great mind of Lord Bacon, acting as proſecutor for the Crown: I have the ſolemn opinion of Mr. Juſtice Foster: I have it laid down by Mr. Juſtice Blackſtone, whoſe eminence you are all acquainted with, and whoſe works are ſo popular that you, no doubt, have read them: I have all theſe different teſtimonies, confirming the doctrine which I have advanced; and I am ſure when you come to examine this confeſſional evidence, you will, with mercy and diſcernment, conſider again and again whether it is poſſible upon ſuch teſtimony to convict the priſoner, under ſuch circumſtances, of an intention ſo proved; when he ſtood in ſuch a ſituation of inducement to ſpeak raſhly—and when the witneſſes were ſo little likely to retain correctly. I am ſure you will heſitate much before you permit yourſelves to believe ſuch teſtimony.

Subject to these general observations, permit me to state to you what the evidence is which has been actually given. I have mentioned the four witnesses Dennis, Winter, Penny, and Le Bretton. I have collected the different modes in which they swear, with regard to this particular point. As to the other points of their evidence, that is a different consideration; I will come to it by-and-by. Le Bretton says, "he heard the prisoner say, he was one of those that invented the gun to shoot at his Majesty." Dennis says, "he said the King was to be assassinated by a dart blown through a tube, and he knew how it was constructed." Winter says, "he said that he shot at his Majesty, and damned unluckily missed him." Penny says, that "he said he was one of the ringleaders of the three that attempted to blow a dart at his Majesty in Covent Garden.

Now, observe first of all what the fact is, upon which the indictment rests, and upon which the prosecutors depend for your verdict of guilty. According to their case a conspiracy existed in September 1794, which was discovered by Upton, in consequence of Upton's discovery three of the conspirators were arrested; Upton was not imprisoned himself, because he was the spy and discoverer; Crossfield was never mentioned nor advertised, till the month of February after; in the mean time this plot, if it ever had any existence at all, was totally at an end. The positive direct evidence upon which my friend must rest his right

to

to call upon you for a verdict against the priſoner, is this, that here was a plot in which this priſoner had a ſhare; which plot was completely deſtroyed and annihilated, was put an end to by the arreſtment of three of the principal conſpirators (as they are ſuppoſed to be) in the month of September; in February Croſsfield is taken into Brest, in a priſon ſhip, there in a ſituation where ſuch converſation might avail him with the French, or he might think ſo, with an impreſſion on his mind of that ſort, to theſe people, ſuch as you have ſeen them, he gives four contradictory accounts, or rather they give four contradictory testimonies. You will obſerve, ſome of them ſuppoſe that an attempt on the King's life had actually been made; ſome ſuppoſe it done in one way; others in another. Now the fact upon which the cauſe rests, according to the caſe of the Crown, is this, not that the attempt was actually made, but that it was propoſed to be made, and was diſappointed; that the intent was never carried into execution, even to the length of fabricating the inſtrument. Does not that ſhew you, that the very teſtimony in this caſe is of ſo fragile a nature, ſo brittle and unſubſtantial in itſelf, that it is impoſſible it ſhould make an impreſſion upon honeſt juſt humane minds, or minds of intelligence and diſcernment. Is it not clear from this, that all the general doctrines which are written in the books, are peculiarly material in the conſideration of this evidence, and that the

testimony

teſtimony now before you, is as it were calculated to illuſtrate the wiſdom of thoſe profound and eminent lawyers, to ſhew the infinite riſk of admitting ſuch evidence.

Is a perſon like Winter, believing the moſt ridiculous and improbable ſtories, contending even now before you on his ſolemn oath, earneſtly for their truth—treated, as he himſelf admits, like a perſon that was ſcoffed at and jeſted by every one —is a man like Dennis, who proved himſelf to have an enmity againſt the priſoner, by his declarations at the Privy Council to Cuthbert,—is a man like Le Bretton, who I will prove to you, attempted to perſuade Captain Clarke to ſupport him in his ſuſpicious teſtimony, but from the honeſty of Clarke's nature failed in that attempt;—are witneſſes like theſe to convince you of the deep guilt charged to the priſoner at the bar?—Are they to be held as having proved that an inſtrument, the preparation of a ſmall part of which is eſtabliſhed by one witneſs only, (Hill) and the exiſtence of which never was proved at all, which received no criminal complexion in this cauſe, but from theſe witneſſes; which received no particular application from any of the witneſſes to the preparation; was meant for the black and ſhocking purpoſe imputed by the indictment. The confeſſions of the priſoner are contradictory in themſelves: directly adverſe to the caſe upon which the Attorney General muſt reſt his cauſe. Can you by poſſibility believe ſuch confeſſions? but the caſe does not reſt even here;

you

you have had the evidence of Penny; you have had the evidence of Winter; you have had the evidence of Le Bretton; you have had the evidence of Dennis.

Gentlemen, you will recollect their teſtimony with regard to the ſituation of the priſon ſhips, with regard to the different perſons who were in captivity; who, if theſe things were ſpoken, muſt have heard them, becauſe they were the meſsmates and intimates of the priſoner. You will recollect above all, Le Bretton's teſtimony, with regard to Captain Clark; and you will recollect with what unwillingneſs, when I put ſome queſtions to him, he choſe to admit that he had any intercourſe with Captain Clarke, at Mrs. Smith's. You will recollect Le Bretton's teſtimony under theſe particular circumſtances. Then in what ſituation do I ſtand? Here are four perſons (whom I have already characterized, and I will not trouble you with characterizing again) who ſwear to theſe confeſſions, and theſe four witneſſes ſtate, that there might have been three times four witneſſes preſent when the confeſſions were made; who all came to England in the cartel ſhip; who knew the priſoner; who lived in intimacy with him; who were likewiſe men of education, and who meſſed at the ſame table with him; all of whom might have been brought here in order to have proved this caſe.

Gentlemen, it was in the power of the Crown to have brought them; to what quarter of the world are they fled?—above all, where is Captain Clarke?

Clarke?—I cannot conceive why he is not here—he was examined to the fact. The counsel for the Crown knew his testimony *. It was impossible for us to bring him here, we could not bear the

* Q. What was your situation on board the Pomona?
A. Boat-steerer.
Q. What was the number of the Pomona's crew?
A. Twenty-three I think, the Captain included.
Q. What was the Captain's name?
A. Charles Clarke.
Q. Did he continue a prisoner in France with you all the time?
A. He did.
Q. Did he come back in the same cartel ship with you to England?
A. He did.
Q. Have you seen him frequently since you came back to England?
A. I did a good while since.
Q. How long since?
A. Never since last Christmas.
Q. Were you examined before the Privy Council upon this business?
A. I was.
Q. Was Captain Clarke examined before the Privy Council?
A. I believe he was not.
Q. Did he attend at the time you attended?
A. Not at the Privy Council he did not.
Q. Have you seen him since your examination before the Council?
A. Yes.
Q. Where?
A. In London.
Q. In what particular place?
A. *At the Solicitor's—Mr. White's.*

expence

expence of his detention. But I will prove moſt diſtinctly, that a converſation paſſed between Le Bretton and Captain Clark, wherein he attempted to excite Clark to give evidence againſt the priſoner, which Clark refuſed as inconſiſtent with the truth.—That is not all, but I ſtand in this fortunate predicament: I am capable by mere accident, for it was not in the power of this poor man to afford to keep the witneſſes at a great expence; they might, but for accident, have ſailed from this country; I am able, I ſay, to produce two of the witneſſes who meſſed with, and conſtantly aſſociated with the priſoner. Now, mark the ſituation in which I produce theſe witneſſes, and mark the argument which is to be derived from this circumſtance, with regard to this confeſſional teſtimony. In the firſt place I will prove to you, from theſe witneſſes, that the priſoner expreſſed great chearfulneſs at leaving France. In the next place I will prove he might very eaſily have remained in France, if he had choſen it. I ſhall tender thoſe witneſſes to the croſs-examination of my learned friends; I know their powers and their abilities, I know the ſenſe they have of their duty, and I am ready to riſk the confirmation of their caſe by thoſe witneſſes,

I ſay, then, if witneſſes of reſpectability, of the higheſt reſpectability to be found in the place at the time, proved to have been in the ſociety of Mr. Croſsfield, at the time ſpoken to by the perſons who have been examined by the Proſecutor, are brought before you, and ſwear that they

heard no ſuch declarations; does it not amount very nearly to a negative proof? were they not the beſt witneſſes to have ſupported the proſecution? were they not the perſons who would be moſt likely to have retained with fidelity the confeſſions, if there had been any? You will remember that two gentlemen of the name of Byron were mentioned, and others whoſe names I need not recite to you. All of them were brought over in the cartel ſhip. Where are thoſe perſons? Gentlemen, their abſence is a ſtrong circumſtance in favour of the priſoner; eſpecially when the poſitive teſtimony is inconſiſtent with itſelf, and each witneſs contradicts the other.

Gentlemen, I find it neceſſary for me from time to time, in order that I may omit no part of the ſerious duty that I have to diſcharge to my client upon this occaſion, to ſummon my recollection that I may be ſure that nothing has eſcaped me, and upon reflection it does not ſeem to me that in going over the evidence I have omitted any thing, that might be important for me to obſerve upon, ſo far as I have gone. It is a great ſatisfaction to me, to think that my learned friend who ſits by me*, who will make up for my deficiencies, is to have an opportunity of addreſſing you after our witneſſes are called; and it is ſtill a greater ſatisfaction for me to think, that the learned perſons who preſide upon this occaſion, and whoſe opinions upon evidence are as enlightened and powerful as any that exiſt in

* Mr. Gurney.

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theſe times, or in any times, will have an opportunity of diſcharging their duty towards the priſoner and you, upon this occaſion.

Gentlemen, what I now proceed to, I have not placed laſt, from the dread of encountering it; for I am convinced, that if there is any impreſſion from that part of the ſubject, that I ſhall be able to relieve your minds from it: I place it laſt, becauſe it ſeems its proper order. Gentlemen, I come now to the conduct and demeanour of the priſoner, from which my learned friend, the Attorney General, wiſhes to draw a proof of his guilt. That is, he ſtates his conduct to have been ſuch, immediately after the diſcovery and the apprehenſion of the other priſoners, as to lead to the ſuppoſition that he from that time, down to the time that he was apprehended in Cornwall, was in ſuch places, and acting in ſuch a manner as to lead neceſſarily to a concluſion that he muſt be guilty.

Gentlemen, in the firſt place I am ſure that is a concluſion which you will not raſhly jump to upon ſuch evidence as you have had of it, even if there was no anſwer to be given to that evidence. Becauſe you, who know the nature of man, know perfectly well, that when a perſon is likely to be put in a ſituation of peril, although he may not be guilty, he may wiſh to keep out of that ſituation of peril. Such conduct is perfectly natural, and therefore it is too much to ſay that a bad motive is always to be imputed, when, in point of fact, unleſs a bad motive is evident, the motive may be

indifferent; and you ought to impute that motive which leads to mercy, rather than that which leads to a concluſion of guilt. But conſider what the nature of this gentleman's demeanour was; he remained ſome days in London after he knew of the diſcovery of this ſuppoſed plot; he then went to Briſtol. Now the proof that is before you with regard to his being at Briſtol, is of this nature; he aſſumed no feigned name; he retired into no private place; he made no attempt to leave the Country. Yet Briſtol is a ſea-port town of the firſt reſort; there is conſtant and facile communication to every part of the world; to neutral ports; to places where he might have enſured protection. Whereas, if you know the South Sea Fiſhery Trade, in which he afterwards embarked, you muſt be aware that they touch at no place; and though a long voyage, they return to this Country without landing any where. He goes to Briſtol, and never attempts to leave the iſland, at Briſtol; he never ſecretes himſelf; he goes into places of public reſort, and does not change his name. Now, what is the particular ſituation of Briſtol; compare it with that of London. I need not ſtate to you, but it is incumbent upon me to make every obſervation, however common it may be, I need not ſtate, that a man at Briſtol would be more eaſily diſcovered than in London. It is, comparatively, a ſmall place, and has a great intercourſe with the capital. He afterwards returns to London, and you obſerve it is the month of January before he embarks. He goes on board at Portſmouth,

mouth, the greateſt ſea-port town in the kingdom, where there is a conſtant and numerous concourſe of his Majeſty's Officers; perſons naturally upon the watch; a town where there is, to the honour of the Chief Magiſtrate be it ſpoken, the best regulated police that exiſts in any town in the Kingdom. Can you have an imagination that a perſon ſhould land under his own name, and go publicly to buy things, in Portſmouth, who is ſought after to be ſeized by Government; that he ſhould not conceal himſelf at all; and yet that his demeanour ſhould be held criminal? They ſail from Portſmouth and put into Falmouth; from Mr. Le Bretton you have it very unwillingly ſtated, that he went once aſhore there, but under no concealment. If Captain Clarke had been here, I could moſt undoubtedly have eſtabliſhed beyond contradiction, that he lived very much on ſhore, with him; but I have it not in my power to produce that witneſs; I may be able, perhaps, to eſtabliſh the fact by other teſtimony. Obſerve the ſituation of Falmouth; it is the moſt westerly port in this Kingdom; the place from whence all the public packets go; it is a ſmall town with only one ſtreet, where no perſon can conceal himſelf; it is a place of conſtant intercourſe with London, the reſort of all the King's Meſſengers, the very perſons ſent to apprehend thoſe accuſed of Treaſon; it is the place, therefore, where ſuch a perſon was more likely to be taken, than in any other place in the Kingdom. You have it in evidence

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from the witneſſes of the proſecutor, that he did go on ſhore once at Falmouth, I hope to have evidence of his going on ſhore more frequently: but I can ſay this, upon the evidence already given, that at this time he never changed his name, and yet he remained there from the 3d to the 13th of February, and all this time it is ſuppoſed that there was an eagerneſs, an anxiety upon the part of Government to ſeize this perſon.

The veſſel ſailed on the 13th of February, and was captured on the 15th; I come now to a moſt important fact indeed. You have had the evidence of confeſſion, that is declarations of the priſoner under the circumſtances which I have ſtated. You have had evidence likewiſe from the ſame witneſſes, ſtating, that immediately upon the capture, he expreſſed great joy at the idea of getting to France. You have this as evidence of declaration—mark what you have upon the other hand. You have the evidence of the fact itſelf—of what fact?—of a fact which proves that he riſked his life in a double view, where he might have been killed in the attempt, or where he muſt have gone to inevitable execution, if he had been diſcovered. What was the attempt? A plan, together with the Engliſh ſailors to ſeize the mariners and Captain of the French ſhip which captured them, for the purpoſe of eſcaping—of eſcaping from whence?—of eſcaping from France, not of going to France—at what riſk? at the riſk of his life, I ſhall prove it more inconteſtibly, but it is already upon the evidence that the

the priſoner was one of thoſe who joined in that deſign. I am not talking of the morality of the attempt. I am not diſcuſſing the abſtract principle which ought to guide men, perhaps even in that ſituation. But I think I am uſing an unanſwerable argument for my client, by eſtabliſhing an act againſt looſe declarations.

What is the ſuppoſed declaration? His eagerneſs to go to France. In what circumſtances are the witneſſes placed who prove that declaration? They cannot from the nature of confeſſional evidence be convicted of perjury. What was ſaid by that great and enlightened luminary of the law, Lord Mansfield? What was his uniform rule to aſcertain the truth of parol teſtimony, during the long period in which he preſided with ſuch eminence and effect in the ſupreme criminal Court of this Country? What was it but this? Look to the facts and circumſtances, conſider what lawyers call the *evidentia rei*; obſerve the tranſactions of men, they never lie.—No ingenuity can twiſt them; no croſs examination can ſhake them; no looſe words can vary them; they carry conviction to the mind unanſwerably. Then I have proved from the mouth of adverſe and unwilling witneſſes, from that unwilling witneſs Le Bretton, from that hoſtile witness Dennis, who abuſed the priſoner as he paſſed through the Privy Council room, (who prove as a confeſſion, the joy of this man on his going to France); I ſay I have proved from them the fact that Croſsfield joined in the ſcheme with the Engliſh

liſh ſailors to ſeize, at the riſk of his life, the French ſhip, with a view to releaſe himſelf from French bondage. I am ſure if he were the man they attempted to deſcribe him, he could not have been impreſſed with feelings to have dictated ſuch an act. Would a man who is held up to you as guilty of every ſpecies of immorality, who is repreſented as entertaining opinions detrimental to the firſt principles of this Conſtitution; who is ſuppoſed to have aimed at the life of his Sovereign;—Can it be believed that ſuch a perſon would have been the firſt to enter the French cabin, to ſeize the Captain, that he might avoid taking refuge in a country where he would have been ſecure, and return to another where he muſt anſwer for his crimes? No. What would the natural conduct of ſuch a man have been? He would have agreed to the plan to ſeize the French ſhip, for the purpoſe of diſcovering it to the French Captain. Does it appear from theſe witneſſes, hoſtile as they are, that he ever diſcovered it? No. He entered honeſtly into the deſign, to releaſe himſelf from French captivity—to reſtore himſelf to Engliſh freedom.

Gentlemen, this fact proves that he was incapable of the crime imputed to him; and it is eſtabliſhed that he was not capable of diſcloſing the deſign to the French; who, in that caſe moſt undoubtedly would have given him a favourable reception in France—He might then have been reported to the Convention, as a friend intitled to a reward for his ſervices,—He might then have commenced a communication

communication with them to have forwarded their views on his return to England; facts aſſerted but not proved in any reſpect whatever.

Reflect, I beſeech you, upon the characters and prejudices of the witneſſes who prove the fact, which I have been diſcuſſing. Conſider the importance of it in all its bearings, and then tell me, combining it with common obſervation on the nature of human conduct, with thoſe learned obſervations on declaratory confeſſional evidence which I have drawn from the pure ſources of Hale, Foſter, and Blackſtone, whether, you can find the priſoner guilty? Tell me, whether, whatever the levity of his character may be, (and he is proved to be of a light volatile character), whatever his debaucheries may be with reſpect to wine, or opium, or women (and I am not here to defend the morality of the priſoner, but to ſtate reaſons, and I am perſuaded unaſwerable reaſons, why you will not ſuppoſe him guilty of the crime with which he is charged); when you compare that fact with the nature of the confeſſions: Tell me, I ſay, whether it is poſſible to conceive that the priſoner could be the man, to conceal a deſign againſt the French Captain, and to harbour a deſign againſt the life of his Sovereign.

Gentlemen, I really feel now that I have exhauſted almoſt every part of this caſe, yet there are two topics remaining, which I muſt likewiſe ſubmit my opinion upon to you; and, I think, I can

account for them in ſuch a manner, that if any impreſſions ſhould remain upon your minds with regard to them, thoſe impreſſions will ſoon be wiped away. The firſt is his changing his name to WILSON before he left France; the next is his conduct upon his landing in England. As to his change of name in France, can any thing be imputed to it at all? You obſerve, from the evidence of all the witneſſes, that he was known by his real name to every man that came over in the cartel ship, and that he lived with them constantly during their captivity. You have it proved that he was a man in very difficult circumſtances, as to his pecuniary affairs. Conſider then the change of name upon principles of common ſenſe. His name of Croſsfield was perfectly known to every body long before he left France. They ſay it was not ſo generally known at firſt, although Le Bretton admits that Clarke might have known that his name was Croſsfield, Le Bretton ſays, he knew him generally by the name of Doctor, but he who had been known originally by the name of Doctor, (the uſual appellation for the ſurgeon of a ſhip among the ſailors) was univerſally known in the French priſon ſhip, by the name Croſsfield.—Univerſally known by that name—obſerve what he does: he changes his name, when he is to come to England, with the very perſons with whom he lived under the name of Croſsfield; with that man, Winter, with whom he had lived every day. It does not appear that when he landed,

ed here, and was taken at Fowey, under the Juſtices Warrant, that he ever attempted to conceal his name, none of the witneſſes that were brought to prove the taking him into cuſtody, at Fowey, prove that he then called himſelf Wilſon; on the contrary, he anſwered without heſitation to the name of Croſsfield, as Colmer, the conſtable, proved on his croſs-examination. How does the caſe ſtand then? He firſt declares his treaſon, he then makes known his name, and laſtly, he takes a falſe name in the full knowledge of all thoſe whom he is ſuppoſed to have made acquainted with his crimes. Can a concluſion of criminality be drawn from ſuch conduct?

The other circumſtance regards his conduct upon landing. You have heard what the nature of his character is, you have heard of his levity, you have heard of his habit of intoxication. I admit that you have not heard that he was very much intoxicated at the time he was taken at Fowey; but the witneſſes would not venture to ſwear he was ſober. Nay they admit he was a little intoxicated. Intoxication is no defence againſt a crime, but it is a clear defence againſt that ſort of conduct which is to raiſe an inference of a crime. Although drunkenneſs will not releaſe a perſon from the guilt of a crime actually committed, yet drunkenneſs, moſt undoubtedly, where you are only to raiſe an inference from a man's actions, will deſtroy any inference to be raiſed from thoſe actions. Now, obſerve what he does after he had that

converſation with the conſtables.* He falls faſt aſleep, and he ſleeps more than half the way between Fowey and Bodmin. Is it not moſt extraordinary if this perſon was not either inebriated, or in ſuch a ſtate that his mind ſhould receive no impreſſion, from the apprehenſion of the crime for which he is now tried; that, after a converſation of this kind, he ſhould have fallen into a ſound ſleep, and remained in it all the reſt of the journey. I again call upon you to examine this caſe according to the common rules of probability; and ſay, whether the concluſion muſt not neceſſarily be that this ſtrange wild converſation was the effect of drunkenneſs.

I have now, I think, gone through every thing with relation to the evidence that has been given, and it is now my purpoſe very briefly to addreſs you upon the nature of the evidence which I ſhall lay before you. Gentlemen, I ſhall do this very briefly for many reaſons.

Firſt of all, becauſe I have conſumed a great deal of your time. In the next place, becauſe my learned friend, who comes after me, I know will obſerve on it after it is given with great ability †, and with great advantage to his client. But,

* Crossfield is said to have pressed the constables who took him to let him go, the constables asked him if they let him go how they should get rid of the Postillion; to which, they said, Crossfield answered, give me one of your pistols and I'll pop at him.

† Mr. Gurney.

Gentlemen,

Gentlemen, there is a part of it which I am under the neceſſity of ſtating to you very particularly, becauſe it relates to one of the main and ſingular features of this cauſe.—Gentlemen, you have heard again and again, from Mr. Attorney General, of the name of UPTON;—you have heard that name from all the witneſſes, except the witneſſes to the declarations; you have heard that name from Mrs. Upton, the widow, as ſhe ſtated herſelf, of UPTON. Gentlemen, I hardly know how to unfold to you the extraordinary circumſtance I am about to mention.—There was no part of this caſe, I do aſſure you ſincerely, that gave me more anxiety than the report that this perſon had been drowned, or was no more. I know that if he had been brought here, his demeanour, and thoſe circumſtances which could have been proved reſpecting him, would have completely ſatisfied your minds upon this ſubject, and that all thoſe obſervations, which I have had the honour of addreſſing to you, would have received a double aid, from his deportment, and from his character.

Gentlemen, the evidence of Mrs. Upton is, that her huſband's HAT is the only part of his apparel which has been found, and that he left a ſeal with her the morning he went away. I could not underſtand what my learned friend, Mr. Garrow, meant by interrogating her as to the ſeal, unleſs it was to repreſent the delivery of it, as a token of love and friendſhip, which he left with a wife whom he was to ſee no more, being determined

to

to destroy himſelf. I can put no other conſtruction upon that fact. Gentlemen, his hat has been found, but Mrs. Upton did not ſay his body had been found; and yet it is rare indeed if a perſon has been drowned, that there ſhould be nothing found of the body. And it is more rare in this country than in any other, becauſe we all know there is a legal proceeding upon all events of that ſort.

Gentlemen, Upton has not appeared ſince that day. I can aſſure you it has been an anxious wiſh of mine that he ſhould appear. Whether I can prove that Mr. Upton will be ſeen again in this world or no, I am ſure I cannot pretend to ſay; but I am perfectly ſure of this, that I ſhall be able to lay before you teſtimony, which will at leaſt amount to as ſtrong proof of his being alive, as the evidence given by Mrs. Upton is proof of his death.

Mr. Attorney General. The Court ſtopped me in this, I only now lay in my claim to anſwer the evidence if any ſuch is offered.

Mr. Adam. Gentlemen, I have received the intimation of my Learned Friend, as I receive every intimation from him, I am ſure with great reſpect, and I have conſidered (as far as the moment will give me an opportunity of conſidering) what courſe I ſhall ſteer upon this occaſion: and, I have no heſitation in ſaying to you, and in ſaying to my Lord, that whatever the wiſdom of the Court may hereafter determine, with regard to the teſtimony that my friend wiſhes to propoſe

propoſe upon that ſubject, I think it ſo eſſential to this caſe, in one point of view, though not at all ſo in another, that the evidence with reſpect to Upton's being alive ſhould be laid before you, that I ſhall certainly think it my duty to offer it. When I ſay in one and not in another reſpect, I will ſtate to my Learned Friend, how I do not think it eſſential in one view.—It is not from the leaſt idea that every diligent ſearch, that every active enquiry which talents and integrity can direct, and induſtry and fidelity execute, has not been uſed upon the preſent occaſion, in order to obtain this man, and to bring him into Court as a witneſs. Becauſe I know, perfectly well, that my Learned Friend never ſtates for effect, that which he does not mean; and, therefore, when I ſay that I ſhall give evidence which will raiſe doubts reſpecting Upton being alive, I ſay it without the leaſt view, or the moſt diſtant ſuſpicion, that every induſtry has not been uſed to diſcover him, for no perſon can pay any man higher reſpect than I do the perſon who exerciſes the function of enquiry, and preparation in theſe proceedings—But in another reſpect I think it moſt eſſential to go into the evidence, and I think ſo for this reaſon. Becauſe if I can raiſe a doubt in your minds with regard to the exiſtence of this man, if I can faſten upon your underſtandings, a belief that this man is not dead, but has gone out of the way, if I can raiſe a preſumption that the ſeal was delivered as a trick and as a plan: and that this man (who had committed

almoſt

almoſt every other crime) had contemplated or wiſhed others to believe that he contemplated to end his life by ſuicide, if I can eſtabliſh thoſe things, I prove the foundation of this plot, to lodge in a character, and to reſult from a mind fraught with ſuch infamy, loaded with ſuch opprobrium, that I hardly know how to find words to expreſs myſelf on the ſubject. Therefore, as it has its origin in this man, as it declaredly has its origin in him, I think it eſſentially neceſſary for the intereſts of my client to lay this evidence before you.

Gentlemen, I have already obſerved ſomewhat upon that evidence, and, therefore, I will not take up your time one moment longer reſpecting it. When it is given, it will be for my friend * to direct your attention to its effect; and if the caſe ſhould take the turn, which it ſeems it may poſſibly do, from what the Attorney General ſtates; I may have an opportunity again, perhaps of addreſſing ſome words to you upon the whole of the evidence relating to Mr. Upton.

Gentlemen, the other evidence which I have to lay before you, I have almoſt ſufficiently pointed out in the courſe of what I have ſaid.—I ſhall produce ſome witneſſes, who were in France, to the facts which occurred there to repel the confeſſional evidence.—I ſhall produce a variety of witneſſes to Upton's character.—I ſhall produce a variety of witneſſes to the circumſtances of the times, when the plot was contrived, though they are

* Mr. Gurney.

proved

proved by ſuch hiſtory as will be admitted; and a variety of witneſſes to the enquiries, the diſputes, the rancour, the animoſity, and the challenge between Upton and the other priſoners, concluding with teſtimony to Croſsfield's good character, and there my caſe will reſt.

Gentlemen, I have now little more to add—I have, however, to return to you my moſt ſincere, and I do aſſure you, Gentlemen, my moſt grateful thanks, for the kind attention which you have been pleaſed to pay to me during a very long addreſs, upon a very important ſubject, in a caſe in which I have felt great, and almoſt unſupportable anxiety.

Gentlemen, I cannot fail to have perceived, from the nature of the evidence, that prejudices may have ariſen in your minds, or in the minds of thoſe who heard the evidence, with regard to the priſoner at the bar; for the evidence certainly went to a variety of points which tended to ſhew the general diſpoſition and tendency of his mind, but not the particular application of that mind to this particular fact. I am ſure that you will lay aſide all impreſſions except ſuch as the evidence in ſupport of the charge neceſſarily makes upon you. Gentlemen, the unfortunate perſon at the bar ſtands now before you, after you have heard the evidence, to have his deliverance, or a verdict of Guilty. The whole form of my addreſs has, I hope, been calculated to impreſs ſoberly, ſeriouſly, and I truſt without any impropriety, upon your

minds, the neceſſity of an acquittal. I wiſh you gravely to conſider upon what this cauſe principally depends—I wiſh you to recollect, that there is no colour whatever given to the Treaſon in queſtion but from the evidence of confeſſion.—I will not weary you with a repetition of arguments, or even with a ſummary of arguments upon that part of the ſubject: I have relied on authorities from times when men ſpoke with great force, and thought with great correctneſs. Permit me, then, in words much more emphatic than any that my mind can ſuggeſt, to preſent to your underſtandings the particular duty which you have to diſcharge upon that branch of this ſerious cauſe.

Gentlemen, my Lord Strafford, when he was tried for ſuch a crime at the bar of the Houſe of Lords, upon evidence ſuch as you have heard, ſaid, with that venerable and powerful eloquence which belonged to his ſuperior mind—"It is now "ages ſince any man was touched to ſuch a "heighth—*on ſuch evidence,* We have lived hap-"pily for ourſelves at home—we have lived glo-"rioufly abroad to the world; let us not awake "thoſe ſleeping lions to our own deſtruction—"thoſe ſad precedents of judicial diſgrace, which "have lain ſo many ages by the wall forgotten "and neglected."

Gentlemen, let me apply theſe words to the preſent caſe; let me entreat you, not ſlightly,

"upon

" upon ſuch evidence, to awaken theſe ſleeping " lions." What is evidence againſt one man may be evidence againſt all.—The caſe of every individual priſoner that comes before a Jury is the caſe of the whole community; becauſe the whole community are intereſted in the diſtribution of juſtice, and in the principles upon which Juries decide. This caſe, in that view of it, like every weighty proſecution, is a moſt important one. In that view I intreat you to conſider it; and, without adding one word more, I again, on behalf of my client and myſelf, return you my ſincere and humble thanks for the attention with which you have honoured me; and I anxiouſly implore Heaven ſo to govern your minds, that you may deliver your judgment in mercy, by a verdict of acquittal.

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